

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/000,487	08/21/2009	6505172	54848-5016-US	8473
70813	7590	12/23/2009	EXAMINER	
GOODWIN PROCTER LLP 901 NEW YORK AVENUE, N.W. WASHINGTON, DC 20001			ART UNIT	PAPER NUMBER

DATE MAILED: 12/23/2009

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patents and Trademark Office
P.O.Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DO NOT USE IN PALM PRINTER

THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS

MERCHANT & GOULD PC

P O BOX 2903

MINNEAPOLIS, MN 55402-0903

Date:

MAILED

DEC 23 2009

CENTRAL REEXAMINATION UNIT

**Transmittal of Communication to Third Party Requester
Inter Partes Reexamination**

REEXAMINATION CONTROL NO. : 95000487

PATENT NO. : 6505172

TECHNOLOGY CENTER : 3999

ART UNIT : 3993

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified Reexamination proceeding. 37 CFR 1.903.

Prior to the filing of a Notice of Appeal, each time the patent owner responds to this communication, the third party requester of the inter partes reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

If an ex parte reexamination has been merged with the inter partes reexamination, no responsive submission by any ex parte third party requester is permitted.

All correspondence relating to this inter partes reexamination proceeding should be directed to the Central Reexamination Unit at the mail, FAX, or hand-carry addresses given at the end of the communication enclosed with this transmittal.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
 United States Patent and Trademark Office
 P.O. Box 1450
 Alexandria, VA 22313-1450
www.uspto.gov

Carl L Benson
 GOODWIN PROCTER LLP
 901 NEW YORK AVENUE, N.W.
 WASHINGTON DC 20001

(For Patent Owner)

MAILED

DEC 23 2009

CENTRAL REEXAMINATION UNIT

MERCHANT & GOULD PC
 P.O. BOX 2903
 MINNEAPOLIS, MN 55402-0903

(For Third Party Requester)

In re: Johnson et alia
Inter Partes Reexamination Proceeding
 Control No. 95/000487
 Deposited on: 10 July 2009
 For: US Patent No. 6,505,172

DECISION
 GRANTING
 PETITION FOR EXTENSION
 OF TIME
 [37 CFR §§ 1.956 & 1.181]

This is a decision on the 16 December 2009, "Petition and Request for One-Month Extension of Time Under 37 CFR §§ 1.956 and 1.17(g)" requesting the response period be extended by one-month for the non-Final Office action mailed 23 October 2009, be extended by one (1) month. The petition submitted 16 December 2009 was timely filed with certificate of service.

The petition is before the Director of the Central Reexamination Unit for consideration.

The petition is granted for the reasons set forth below.

DISCUSSION

The Patent Owner's representative requests the period for response be extended by one-month for the non-final Office action mailed 23 October 2009, which set two (2) month's time for filing a response thereto. The petition for extension of time was timely filed on 16 December 2009, together with electronic fee transmittal for the \$200.00 petition fee as required by 37 CFR § 1.956 and 37 CFR § 1.17 (g). A certificate of service was provided with the petition.

The request is granted.

37 CFR § 1.956. Patent owner extensions of time in inter partes reexamination.
The time for taking any action by a patent owner in an inter partes reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition set forth in § 1.17(g). See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

Addressing the requirement of 37 CFR § 1.956 to make a showing of "sufficient cause" to grant an extension request, MPEP § 2665 states, in pertinent part:

As noted above, a request for extension of time under 37 CFR § 1.956 will be granted only for sufficient cause, ...

Evaluation of whether "sufficient cause" has been shown for an extension must be made by **balancing** the desire to provide the patent owner with a fair opportunity to respond, **against** the requirement of the statute, 35 U.S.C. § 314(c), that the proceedings be conducted with special dispatch. ...

Any petition request must include the required petition fee as set forth according to 37 CFR § 1.17 (g) and 37 CFR § 1.956.

MPEP § 2665 Extension of Time for Patent Owner Response (in-part)

Requests for an extension of time in an inter partes reexamination proceeding will be

considered only after the first Office action on the merits in the reexamination is mailed. Any request for an extension of time filed prior to the first action will be denied.

The certificate of mailing and the certificate of transmission procedures (37 CFR § 1.8), and the “Express Mail” mailing procedure (37 CFR § 1.10), may be used to file a request for extension of time, as well as any other paper in an existing *inter partes* reexamination proceeding (see MPEP § 2666).

As noted above, a request for extension of time under 37 CFR § 1.956 will be granted only for sufficient cause, and the request must be filed on or before the day on which action by the patent owner is due. In no case, will the mere filing of a request for extension of time automatically effect any extension, because the showing of cause may be insufficient or incomplete. In the prosecution of an *ex parte* reexamination, an automatic 1-month extension of time to take further action is granted upon filing a first timely response to a final Office action (see MPEP § 2272). The automatic extension given in *ex parte* reexamination does not apply to the first response to an Action Closing Prosecution (ACP) in an *inter partes* reexamination. The reason is that in *inter partes* reexamination, parties do not file an appeal in response to an ACP, and a further Office action (Right of Appeal Notice) will issue even if the parties make no response at all. Thus, there is no time period to appeal running against the parties after the ACP is issued, unlike *ex parte* reexamination where an appeal is due after final rejection and the time is thus automatically extended one month to provide time for the patent owner to review the Office’s response to the amendment before deciding whether to appeal.

Evaluation of whether “sufficient cause” has been shown for an extension must be made by balancing the desire to provide the patent owner with a fair opportunity to respond, against the requirement of the statute, 35 U.S.C. § 314(c), that the proceedings be conducted with special dispatch.

DECISION

The patent owner’s representative petitions to extend the period for response by adding one (1) month to the response period. The decision to extend the period for response is evaluated based upon a showing of “sufficient cause.” There is always the consideration to balance the need for the patent owner to have a fair opportunity to respond to the Office action between the need for special dispatch.

The non-final Office action was mailed 23 October 2009. The patent owner submitted a

timely filed the petition on 16 December 2009 with the appropriate fee and certificate of service.

The petition dated 16 December 2009 notes several reasons for extension, among them, the need to obtain evidence for the preparation of declarations under 37 CFR § 1.131 or 1.132. On balance, the petitioner has demonstrated "sufficient cause" for the purpose of granting one (1) month extension of time.

The petition request to extend the response time is hereby granted.

A one (1) month extension of time is hereby granted.

CONCLUSION

1. The patent owner's petition for extension for one (1) month time in which to file a response to the non-final Office action dated 23 October 2009 is hereby granted.
2. The period for response is extended by one (1) month.
3. The response is extended to 23 January 2010.
4. All correspondence involving this proceeding may be addressed to the following:

By Mail to: Mail Stop *Inter Partes* Reexam
Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

By Fax to: (571) 273-9900
Central Reexamination Unit

By Hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By EFS: Registered users of EFS-Web may alternatively submit such correspondence via the electronic filing system EFS-Web, at <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>. EFS-Web offers the benefit of quick submission to the particular area of the Office that needs to act on the correspondence. Also, EFS-Web submissions are “soft scanned” (i.e., electronically uploaded) directly into the official file for the reexamination proceeding, which offers parties the opportunity to review the content of their submissions after the “soft scanning” process is complete.

5. Telephone inquiries with regard to this decision should be directed to Mark Reinhart, at (571) 272-1611, in the absence of Mark Reinhart calls may be directed to Eric Keasel, at (571) 272-4929, or Jessica Harrison, at (571) 272-4449, all are Supervisory Patent Examiners in the Central Reexamination Unit, Art Unit 3992.

/Mark Reinhart/

Mark Reinhart,
Supervisory Patent Examiner,
AU 3992,
Central Reexamination Unit
571-272-1611

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re <i>Inter Partes</i> Reexamination of:)	
)	
U.S Patent 6,505,172)	Group Art Unit: 3992
)	
Control No. 95/000,487)	Examiner: J. R. Pokrzywa
)	
Filed: August 21, 2009)	Confirmation No.: 8473
)	
For: ELECTRONIC SOURCING)	
SYSTEM)	

MAIL STOP *INTER PARTES REEXAM*
ATTN: CENTRAL REEXAMINATION UNIT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Petition and Request for Extension of Time Under 37 C.F.R. §§ 1.956 and 1.17(g)

Sir,

The Patent Owner hereby requests and petitions the Commissioner for a one month extension of time in which to file the Patent Owner's Response to the initial *Inter Partes* Office Action mailed in the above referenced matter on October 23, 2009. The Office Action sets a two month time period for the Patent Owner response. This petition requests that the time period be extended for one month from December 23, 2009 to January 23, 2010.

37 C.F.R. § 1.956 provides for an extension of time for the Patent Owner Response for a sufficient cause and for a reasonable time. During preparation of the Patent Owner's

Response, it has become apparent that additional time is needed to fully respond to the Office Action.

The Office Action asserts six different grounds of rejections. Patent Owner has been diligently preparing a response to each of the different grounds of rejection including procuring declarations supporting the Patent Owner's positions. The Patent Owner has been procuring an expert declaration to explain the level of skill of one of ordinary skill in the art, the proper interpretation of the claim under reexamination and the scope of the applied art. In addition, the Examiner has invited the Patent Owner to overcome the rejection set forth in Ground #2 with a showing under 37 C.F.R. §§ 1.131 or 1.132 that the invention disclosed but not claimed in the applied reference was derived from the inventor of this application. (Office Action p. 12.) Patent Owner has become aware that such declarations cannot be obtained from each of the relevant inventors prior to the December 23, 2009, due date. The inventors' schedules through the holiday season have hindered the preparation and execution of these declarations. The Patent Owner now believes that each of the declarations desired to completely respond to the Office Action, despite the Patent Owner's diligent efforts to complete the response, cannot practicably be obtained prior to the December 23, 2009, due date.

For the above good and sufficient reasons, the Patent Owner respectfully requests a limited extension of time of one month in which to respond to the October 23, 2009, Office Action.

Pursuant to 37 C.F.R. § 1.17(g), the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-4494 in the amount of \$200.00 for filing this request under 37 C.F.R. § 1.956. Should any additional fee be due in connection with this matter, the Commissioner is also authorized to charge such fees to the undersigned's deposit account.

Respectfully submitted,
Goodwin|Procter LLP

Dated: December 16, 2009

By: /Carl L. Benson/
Carl L. Benson
Registration No. 38,378

Goodwin|Procter LLP
901 New York Avenue NW
Washington, D.C. 20001
(202) 326-4000 (telephone)
(202) 346-4444 (facsimile)